

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY
COMMISSION,**

Plaintiff,

vs.

**AMERICA’S THRIFT STORES
OF ALABAMA, INC.**

d/b/a Alabama Thrift Stores, Inc.,

Defendant.

Civil Action Number
2:11-cv-03466-AKK

CONSENT DECREE

I. INTRODUCTION

Plaintiff Equal Employment Opportunity Commission (hereinafter “EEOC” or “Commission”) brought this action against Defendant America’s Thrift Stores of Alabama, Inc. d/b/a/ Alabama Thrift Stores, Inc. (hereinafter “Defendant” or “America’s Thrift ”) under Title I of the Americans with Disabilities Act of 1990 (“ADA”), *as amended* by the Americans with Disabilities Act Amendments Act of 2008 (hereinafter “the ADAAA”), and Title I of the Civil Rights Act of 1991. The EEOC alleges America’s Thrift discriminated against Jenny Grimes (hereinafter referred to as “Charging Party”) by refusing to provide Charging Party with a

reasonable accommodation of her disability, and discharging her from employment because of her disability in violation of ADA provisions 42 U.S.C. §§ 12112(a) and 12112(b)(5)(A). Defendant denies these allegations and claims it terminated the Charging Party because she could not perform the essential functions of her job.

A. This Consent Decree is entered into by the EEOC and Defendant America's Thrift. This Consent Decree shall be final and binding between the EEOC and Defendant America's Thrift, its directors, officers, agents, employees, successors or assigns (hereinafter collectively referred to as "Defendant" or "America's Thrift"). This Consent Decree applies solely to all America's Thrift facilities located in Jefferson and Shelby County, Alabama.

B. This Consent Decree shall not constitute an adjudication of or finding on the merits of the case and shall not be construed as an admission by Defendant of any violation of the Americans with Disabilities Act. This Consent Decree does not affect any other administrative charges pending with the EEOC or any cases currently pending in court other than the case specifically referenced in this paragraph.

II. GENERAL PROVISIONS

Upon consent of the parties to this action, it is hereby ORDERED, ADJUDGED, and DECREED that:

C. This Court has jurisdiction over the parties and the subject matter of this action.

D. The terms of this Consent Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of Defendant America's Thrift. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event that any individual is found to be in contempt for a violation of this Consent Decree.

E. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 2:11-cv-03466-AKK.

F. This Consent Decree shall be filed in the United States District Court for the Northern District of Alabama, Southern Division, and shall continue to be in effect for a period of two (2) years from the date of entry of this decree. Any modification of this Consent Decree by any party must be made by motion to the Court.

G. The Court retains jurisdiction over this case in order to enforce the terms of the Consent Decree.

H. This Consent Decree shall apply to Defendant America's Thrift's operations in Jefferson and Shelby County, Alabama.

I. Defendant America's Thrift shall comply fully with all provisions of the Consent Decree and the ADA. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Defendant America's Thrift under the ADA or the EEOC's authority to process or litigate any charge of discrimination which may be pending or filed against Defendant America's Thrift in the future.

III. NON-DISCRIMINATION

J. Defendant America's Thrift and its officers, agents, employees, successors, and assigns, and all of those in active concert or participation with them, or any of them, is enjoined from discriminating against an employee or applicant in violation of the Americans with Disabilities Act. The prohibited practices include, but are not limited to, the following:

- (1) Discriminating against a qualified individual with a disability on the basis of the disability in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, and other terms, conditions, and

privileges of employment, including but not limited to employee leave and return from leave;

- (2) Utilizing qualification standards, employment tests, or other selection criteria unless the standard, test, or other selection criteria is shown to be job-related for the position in question and consistent with business necessity;
- (3) Refusing to provide a reasonable accommodation in accord with the Americans with Disabilities Act, as amended; and
- (4) Retaliating against any employee for asserting rights under the ADA or engaging in other protected activity.

IV. NON-RETALIATION

K. Defendant America's Thrift, its officers, agents, employees, successors, assigns, shall not engage in retaliation of any kind against any person because such person:

- (1) Opposed any practice made unlawful under the ADA;
- (2) Contacted, or filed a charge of discrimination with, the Commission or a state agency in relation to the ADA, or testified, assisted or participated in any manner in any ADA-related investigation, proceeding, or hearing;
- (3) Requested and/or received relief in accord with this Consent Decree;
- (4) Participated in any manner in this action or in the EEOC investigation giving rise to this action;
- (5) Participated in an internal investigation related to alleged violations of the ADA; or,

(6) Asserted any rights under this Consent Decree.

Defendant America's Thrift further shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the ADA.

V. RELIEF TO THE CHARGING PARTY

L. Within ten (10) calendar days of the entry of this Consent Decree, Defendant America's Thrift shall pay monetary relief in the gross amount of **\$50,000.00 (fifty thousand dollars)** to Jenny Grimes, for compensatory damages, backpay, and front pay in lieu of reinstatement. This amount shall be paid in full settlement of the claims against Defendant America's Thrift which were the basis of the EEOC Charge filed by the Charging Party (No. 846-2009-3194), and raised in the EEOC's Complaint. Payment shall be made by check payable to Jenny Grimes and mailed to the address provided by the EEOC. America's Thrift will issue to Ms. Grimes applicable United States Internal Revenue Service forms no later than February 15, 2013.

Defendant America's Thrift shall mail a photocopy of the check to the attention of the Regional Attorney, Equal Employment Opportunity Commission,

Birmingham District Office, 1130 – 22nd Street South, Suite 2000, Birmingham, Alabama 35205 at the time the check is sent to Ms. Grimes.

VI. GENERAL INJUNCTIVE RELIEF

M. Within sixty (60) calendar days after this Consent Decree is approved by the Court, Defendant America's Thrift shall develop and implement comprehensive policies and procedures to ensure that applicants and employees are not subject to discrimination made unlawful by the ADA. At a minimum, the policies and procedures shall contain and provide for the following:

- (1) A requirement that America's Thrift managers, supervisors, and human resources employees be trained on the requirements of the ADA;
- (2) Notice to applicants and employees (via the policies and procedures, and a poster displayed in a public area of each America's Thrift's facilities) of their rights under the ADA, including their right to a reasonable accommodation;
- (3) Written notice to employees and applicants, in a document provided to them in conjunction with medical or disability leave taken for a condition lasting three or more days, of their rights under the ADA, including their right to a reasonable accommodation;
- (4) A plan for training America's Thrift supervisors, managers, and human resources personnel on the requirements of the ADA, provisions of this Consent Decree, and America's Thrift's ADA policies and procedures;

- (5) A provision for disciplinary action, up to and including termination, that may be imposed on supervisors, managers and human resources employees who violate the ADA, this Consent Decree, or America's Thrift's ADA policies and procedures;
- (6) A process for applicants and employees to seek a reasonable accommodation under the ADA;
- (7) A process for applicants and employees to report complaints of ADA-related discrimination and retaliation;
- (8) A system for the maintenance and retention of records related to employment-related medical evaluations and recommendations;
- (9) A system for the maintenance and retention of records related to reasonable accommodation requests, including records reflecting consideration and evaluation of accommodation requests;
- (10) A system for ensuring the dissemination to all America's Thrift employees of a copy of America's Thrift's ADA policy and procedures;

N. Defendant shall promptly and appropriately investigate all complaints of discrimination and retaliation under the ADA. The investigation shall include factual findings, a finding of whether discrimination occurred, interviews of all known or potential victims and key witnesses, and credibility assessments. All witness interviews shall be memorialized with concurrent notes or recordings in audio/video or other electronic format.

O. Prior to terminating an employee because he has or is perceived to have a physical or mental impairment that makes him unable to perform the

essential job function(s), with or without a reasonable accommodation, America's Thrift shall advise the employee in writing of (i) the impairment America's Thrift contends the employee suffers, (ii) the essential job function(s) that America's Thrift believes the employee cannot perform as a result of the impairment, and, if applicable, (iii) the nature of the safety risk that he or she poses to himself or herself or others as a result of the impairment. America's Thrift shall grant the employee at least twenty-one (21) days to submit additional information regarding the employee's ability to perform the essential job function(s), with or without a reasonable accommodation, which America's Thrift will consider prior to making a final employment decision.

P. Within ninety (90) calendar days after this Consent Decree is entered by the Court, America's Thrift shall train all employees, including supervisory, management, and human resources employees on the ADA, this Consent Decree, and America's Thrift's ADA policies and procedures. The training shall cover all aspects of the ADA including, but not limited to, the legal requirements of the ADA, hiring and job application procedures in relation to persons with actual or perceived disabilities, circumstances under which employers may require medical examinations or make inquiries to physicians, background and reference checks, the definition and examples of a reasonable accommodation under the ADA, the

interactive process as it relates to a request for a reasonable accommodation, resources for determining and identifying reasonable accommodations, procedures for providing reasonable accommodation to individuals with disabilities, prohibition against retaliation and coercion against employees who engage in activity protected by the ADA, confidentiality provisions of the ADA, the requirement for coordination with the ADA Coordinator, and America's Thrift's internal ADA policy and procedures. The training also shall explain the steps employees should take to address requests for reasonable accommodations to individuals with disabilities. The training will be repeated (with modifications to ensure its compliance with the law) once every twelve months after the first ADA training is completed. All newly hired managers, human resources employees and recruiters shall be required to complete this training within fourteen days of their start date, irrespective of their participation in the annual training.

Q. Each ADA training session shall last one hour, and America's Thrift shall generate a registry containing signatures of all persons in attendance. Each registry shall be retained by America's Thrift for the duration of the Consent Decree.

R. Each training session shall be delivered in accord with an outline prepared at least one-week in advance of the training. The outline, all training

materials (pamphlets, brochures, agendas, videos), and the registry shall be delivered to the EEOC Birmingham District Office, to the attention of the Regional Attorney at the address set out above, within 30 days after each training session. Acceptance or review of these materials by EEOC shall not constitute approval of the said materials, but may be retained for compliance purposes.

VII. POSTING OF NOTICE

S. Defendant American Thrift will post and cause to remain posted the posters required to be displayed in the workplace by Commission Regulations.

T. Within ninety (90) calendar days after entry of this Decree, Defendant American Thrift shall post 8½-inch-by-11-inch sized copies of a notice in the form of Exhibit A attached to this Consent Decree on all bulletin boards usually used by Defendant America's Thrift at all America's Thrift facilities for announcements, notices of employment policy, or practice changes to employees, during the term of this Decree and at every location employee bulletins are posted and where applications are accepted, including on any America's Thrift or affiliated corporate website at which job vacancies are posted or through which America's Thrift accepts applications for employment.

VIII. REPORTING

U. On a semi-annual basis for the duration of the Decree, Defendant America's Thrift will provide the Birmingham District Office Regional Attorney a report on the training conducted under this Decree. The Defendant America's Thrift will also maintain the following records during the period of this Decree:

1. ADA policies and procedures;
2. Medical inquiries or exams made of employees;
3. Requests for Accommodations and responses thereto;
4. All documents generated in connection with any complaint investigation, or resolution of every complaint involving allegations of violations of the ADA, including involving allegations related to medical exams, medical inquiries, discrimination or the request for or denial of a reasonable accommodation;
5. All materials used in training; and
6. Attendance lists for all training.

During the term of the Decree, EEOC staff may conduct periodic confidential interviews to monitor compliance with the decree.

IX. DISPUTE RESOLUTION

V. In the event that either party to the Consent Decree believes that the other party has failed to comply with any provision(s) of the Consent Decree, the complaining party shall notify the other party of the alleged non-compliance within fourteen (14) calendar days of discovery of the alleged non-compliance and shall afford the alleged non-complying party fourteen (14) calendar days thereafter to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within fourteen (14) calendar days, the complaining party may apply to the Court for appropriate relief.

X. COSTS AND ATTORNEY FEES

W. Each party shall bear its own attorney's fees and costs incurred in this action up to the date of the entry of this Decree.

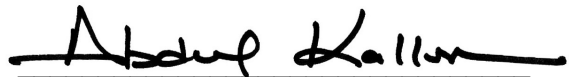
XI. DURATION OF DECREE

X. The duration of the Consent Decree shall be two (2) years from its entry by the Court. This Action shall be dismissed with prejudice; however, the Court shall retain jurisdiction over this action for the duration of the Consent Decree, during which Defendant America's Thrift or the EEOC may petition this

Court for compliance with the Consent Decree. Should the Court determine that either party has not complied with this Consent Decree, appropriate relief, including extension of the Consent Decree for such period as may be necessary to remedy its non-compliance, may be ordered. Absent extension, the Consent Decree shall expire by its own terms at the end of two (2) years from the date of entry, without further action by the Parties.

The parties agree to the entry of the Consent Decree subject to final approval by the Court.

DONE this 23rd day of January, 2013.

A handwritten signature in black ink, appearing to read "Abdul Kallon", written over a horizontal line.

ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE

EXHIBIT A

**NOTICE TO ALL AMERICA'S THRIFT STORES OF ALABAMA
EMPLOYEES**

The Equal Employment Opportunity Commission (the "Commission" and/or "EEOC") and America's Thrift Stores of Alabama, Inc. ("America's Thrift") have resolved a case filed in 2011 by the Commission, *EEOC v. America's Thrift Stores of Alabama, Inc.* [Civil Action No. 2:11-cv-3466: United States District Court for the Northern District of Alabama, Southern Division].

To resolve the lawsuit, America's Thrift and the Commission have entered into a Consent Decree. In agreeing to resolve the lawsuit, America's Thrift denies all allegations and claims in the lawsuit, and the parties agree that this resolution and the Consent Decree do not constitute any admission of liability on the part of America's Thrift Stores. America's Thrift has agreed that it will not discriminate on the basis of disability, and that it will hold employees, supervisors and managers accountable for participating in disability discrimination. America's Thrift also agrees that it will train employees, supervisors and managers on the Americans with Disabilities Act (the "ADA") and America's Thrift's prohibitions against disability discrimination and ensure that employees, supervisors and managers are clear on how to report and address disability discrimination.

Title I of the Americans with Disabilities Act (the “ADA”) prohibits discrimination against employees based upon disability, perceived disability, or record of disability. The ADA further prohibits retaliation against employees who avail themselves of the rights under the ADA by engaging in protected activities such as complaining to an employer about what he or she believes to be a violation of the ADA, or filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce the ADA. If you believe you have been discriminated against, you may contact the EEOC at (205) 212-2000. The EEOC charges no fees and has employees who speak languages other than English.

This Notice must remain posted for twenty-four (24) months from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to the: Regional Attorney, EEOC Birmingham District Office, Ridge Park Place, Suite 2000, 1130 - 22nd Street South, Birmingham, Alabama 35205.

DATE: _____